



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,479	03/31/2004	David W. Moskowitz	58134.3	7392
27128 7590 02/20/2008 BLACKWELL SANDERS LLP 720 OLIVE STREET SUITE 2400 ST. LOUIS, MO 63101				
EXAMINER				
RAE, CHARLESWORTH E				
ART UNIT		PAPER NUMBER		
1611				
MAIL DATE		DELIVERY MODE		
02/20/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/820,479

**Applicant(s)**

MOSKOWITZ, DAVID W.

**Examiner**

Charlesworth Rae

**Art Unit**

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

Acknowledgement is made of applicants' filing of the instant application as a Request for Continued Examination (RCE) under 37 CFR 1.1114. By Amendment filed 1/28/08.

Applicant's amendment filed 11/30/07 is acknowledged and made of record.

### **Status of the Claims**

Claims 1-15 are currently pending in this application.

Claims 1-5, and 8-15 are withdrawn for examination purposes for being directed to non-elected subject matter.

Claims 6-7 are presented for examination.

### **Response to applicant's arguments/remarks**

#### **Scope of enablement rejection under 112, 1<sup>st</sup> para**

Applicant contends that this rejection should be withdrawn in view of the claim amendment limiting the scope of the claims to treating coronavirus infections.

In response, this rejection is maintained as applicant's argument is not found to be persuasive for the reasons made of record in the Office action mailed 10/02/07 at pages 3 to 9. To reiterate, claim 6 encompasses a multiplicity of coronaviruses that are known to cause distinct clinical manifestations. In particular, claim 6 recites the term "coronavirus infections" which is construed to encompass any and all coronavirus species/strains. However, someone of skill in the art would not be able to reasonably extrapolate the asserted improvement of pulmonary symptoms observed in practicing the instant invention in patients suffering from SARS to other patient populations suffering from different species/strains of coronaviruses in view of the fact that there is

Art Unit: 1614

still no known cure for the coronavirus that causes SARS. To the extent that claim 7 is directed to the treatment “SARS,” rather than the pulmonary symptomatology associated with said condition, the scope of claim 7 is deemed to be over broad. Thus, an artisan skilled in the art would not be able to reasonably and predictably practice the instant claimed invention commensurate with the scope of the claims without conducting undue experimentation.

### **Rejection**

#### **Claim Rejections – 35 USC 112 – First Paragraph**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6-7 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a method of treating symptoms related to viral infections which is considered an embodiment within the scope of the treatment of coronavirus infections associated with pulmonary symptoms/syndromes (e.g. SARS), does not reasonably provide enablement for the treatment of a viral infection via a treatment that targets the viral agent itself. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims for the reasons made of record in the Office action mailed 10/02/07 at pages 3-9, which are incorporated by reference, and for the additional reasons discussed above in connection with the Response to applicant's arguments/remarks.

Art Unit: 1614

This is a scope of enablement rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charlesworth Rae whose telephone number is 571-272-6029. The examiner can normally be reached between 9 a.m. to 5:30 p.m. Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached at 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 800-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10 February 2008  
CER

/Brian-Yong S Kwon/  
Primary Examiner, Art Unit 1614